

**Notice of Allowability**

Application No.

09/989,912

Applicant(s)

PENNER ET AL.

Examiner

Carl H. Layno  
3/23/05

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Paper No. 6/21/04.
2. ☒ The allowed claim(s) is/are 1-38.
3. ☒ The drawings filed on 11 March 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 6/21/04
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

**NOTICE OF ALLOWANCE**

1. Acknowledgment is made of applicant's amendment which was received by the Office on June 21, 2004.

2. Claims 1-38 are active.

***Specification***

3. In view of the applicant's modifications to the specification, the Examiner is withdrawing the objections which were made against the specification in the last Office action.

***Claim Rejections - 35 USC § 112***

4. In view of applicant's modifications to claim 36 (see Examiner's Amendment below), the Examiner is withdrawing the 35 U.S.C 112 2<sup>nd</sup> paragraph rejection which was made against this claim in the last Office action.

***Claim Rejections - 35 USC § 103***

5. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 103(a) rejection of Walsh et al '265 in view of Funke '859, which was made against claims 15-24, 27, 28, 31-34, 37, and 38 in the last Office action.

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***Examiner's Amendment***

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Scott S. Kokka on March 23, 2005.

The application has been amended as follows:

-Claim 36, line 1, replace the words "claim 34" with the words "claim 35".

***Allowable Subject Matter***

7. Claims 1-38 are allowed.

***Reasons for Allowance***

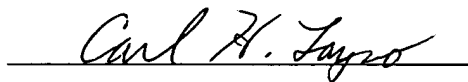
8. The following is an examiner's statement of reasons for allowance:

Applicant's claims 1-14 are deemed to be allowable over the prior art of record for the same reasons given previously in the last Office Action.

Independent claims 15 and 27, as amended, now recite the feature of an "acoustic switch" as part of a communications device for communicating with an implant. The Examiner could find no reference(s) in the prior art that show this feature; consequently, the Examiner also deems independent claims 15 and 27, and their depending claims to be allowable over the prior art of record.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

A handwritten signature in cursive script, reading "Carl H. Layno", is written over a horizontal line.

CARL LAYNO  
PRIMARY EXAMINER

CHL  
3/23/2005